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TRANSCRIPT OF RE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 933.

P. P. PICKARD, COMPTROLLER OF THE TREASURY OF THE STATE OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

THE PULLMAN SOUTHERN CAR COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED SEPTEMBER 10, 1885.

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1 Middle District of Tennessee, Circuit Court of the United States for the said District.

PULLMAN SOUTHERN CAR CO.
vs.
JAMES N. NOLAN, Comptroller of the Treasury of Tennessee. } No. 2582.

Be it remembered that heretofore, to wit, on the 13th day of August, 1881, the plaintiffs in the above-entitled action, by their attorneys, filed in the office of the clerk of said circuit court of said district their declaration in said action in words and figures following, to wit:

PULLMAN SOUTHERN CAR COMPANY
vs.
JAMES N. NOLAN, Comptroller of the Treasury of Tennessee. } October Term, 1881.

Circuit Court of the United States for the Middle District of Tennessee, at Nashville.

THE PULLMAN SOUTHERN CAR COMPANY, Pl't'ff,
vs.
JAMES N. NOLAN, Comptroller of the Treasury of Tennessee, Defendant.

2 The Pullman Southern Car Company, duly incorporated by the General Assembly of the State of Kentucky, plaintiff in this suit, complain of James N. Nolan, comptroller of the treasury of the State of Tennessee, a citizen of said State, who is in court by summons of a plea that he render to the said plaintiffs the sum of five thousand seven hundred dollars, lawful money of the United States, which he owes to and unjustly detains from them. For that whereas the General Assembly of the State of Tennessee passed an act on the 20th of March, 1873, approved March 21st, 1873, entitled An act to facilitate the collection of revenues, by which it was provided, among other things, that "in all cases in which an officer charged by law with the collection of revenue due the State shall institute any proceeding or take any steps for the collection of the same alleged or claimed to be due by said officer from any citizens, the party against whom the proceeding or step is taken shall, if he conceives the same to be unjust or illegal, or against any statute or clause of the constitution of the State, pay the same under protest, and upon his making such payment the
3 officer or collector shall pay such revenue into the State treasury, giving notice at the time of such payment to the comptroller that the same was paid under protest; and the party paying such revenue may, at any time within thirty days after making said payment, and not longer thereafter, sue the said officer having collected said sum for the recovery thereof, and the same may be tried in any court having jurisdiction of the amount and parties, and if it be determined that the same was wrongfully collected as

not being due from the said party to the State for any reason going to the merits of the same, then the court trying the case may certify of record that the same was wrongfully paid and ought to be refunded, and thereupon the comptroller shall issue his warrant for the same, which shall be paid in preference to other claims on the treasury."

On the 9th of March, 1877, the General Assembly of the State of Tennessee passed an act, approved March 16th, 1877, entitled An act declaring the mode and manner of valuing the property of telegraph companies for taxation, and of taxing sleeping-cars,
4 by which, among other things, it was provided, "That the running and using of sleeping cars or coaches on railroads in Tennessee not owned by the railroads upon which they are run or used, is declared to be a privilege, and the companies owning and running or using said cars or coaches are required to report on or before the 1st day of May of each year to the comptroller the number of cars so used by them in this State; and they shall be required to pay to the comptroller by the 1st of July following fifty dollars for each and every of said cars or coaches used or as run over said roads; and if the said privilege tax herein assessed be not paid as aforesaid, the comptroller shall enforce the payment of the same by distress warrant." The defendant, James N. Nolan, comptroller of the State of Tennessee, and a citizen of said State, alleged and claimed that there was due and unpaid from plaintiffs to the State of Tennessee privilege taxes for the years 1888, 1879, and 1880, at the rate of fifty dollars upon each of thirty-eight sleeping-cars for each of said years, making in the aggregate the amount of five thousand seven hundred dollars; and so alleging and claiming, the said defendant heretofore, to wit, on the 1st day of
5 July, 1881, instituted proceedings and took steps for the collection of the same from the plaintiffs; and the plaintiffs conceiving the same to be unjust, illegal, and against the statutes and constitution of the State of Tennessee and against the Constitution of the United States, on the 15th day of July, 1881, paid said sum of five thousand seven hundred dollars to said defendant comptroller as aforesaid under protest. And upon their making such payment, the said defendant, as comptroller aforesaid, upon said July 15th, 1881, paid said five thousand seven hundred dollars into the State treasury, giving notice at the time of said payment that the same was paid by plaintiffs under protest. And thirty days have not elapsed since the making of said payment.

Plaintiffs aver and insist that said taxes and the collection thereof were unjust and illegal and contrary to the statutes and constitution of the State of Tennessee and the Constitution of the United States for the following, among other reasons:

1st. The sleeping cars or coaches for the running or use of which said taxes were claimed and collected were not run nor used
6 by the plaintiffs during either of the years 1878, 1879, or 1880, but they were run and used during those years by the Louisville and Nashville Railroad Company, Nashville, Chattanooga and St. Louis railway and certain other railroad companies in the

State of Tennessee, though they were owned during that time by plaintiffs, who permitted said railroad companies to run and use them under certain contract stipulations.

2d. Said sleeping cars or coaches so run and used by said railroad companies were, during the whole of said years 1878, 1879, & 1880 employed by said railroad companies in interstate commerce. The said cars being run into and through the State of Tennessee, from and into other States of the Union, transporting passengers from other States into or across the State of Tennessee, or from the State of Tennessee into other States. The requirements of modern interstate commerce imperatively demand that travel-ers shall be furnished with suitable accommodations for sleeping and resting, and the receipts from sleeping-car passengers, where journeys are restricted to the limits of the State of Tennessee, amount annually to much less per car than the privilege tax assessed by
7 the act of March, 1877, referred to above.

3d. Under and by virtue of reissued letters patent No. 6882 and 6648, duly granted and issued under the Constitution and laws of the United States and of which plaintiffs have by contract the right of use, as assignees, said sleeping cars or coaches known as the Pullman sleeping cars were built, and during the years 1878, 1879, and 1880, were being used by the railroad companies in the State of Tennessee, under certain contracts between said railroad companies and plaintiff. The said railroad companies carried passengers in said coaches and charged said passengers the usual fare for transportation; plaintiffs, however, under said contract reserved and exercised the right of furnishing such passengers as the railroad companies allowed to ride in said cars or coaches such facilities for sleeping and sitting during their journeys as were provided by the inventions covered by the patents referred to above, and for the use of such patented inventions by the passengers aforesaid plaintiffs charged and collected from them certain reasonable compensation.

But plaintiffs exercised no control or management over the
8 cars and had nothing to do with the running or use of the cars, except in the use of such parts of the cars as were covered by the patented inventions aforesaid. Plaintiffs aver that the terms for which said letters patent were issued had not expired and that they were in full force during the years 1878, 1879, & 1880, and that plaintiffs had the right and use of enjoyment in the same; that said letters patent were of great value and usefulness; that they had not been licensed to others to use; and that they had universally been acquiesced in by the public.

4th. Plaintiffs aver and insist that the running or using of sleeping cars or coaches on railroads in Tennessee was not a privilege in the sense in which that word is used in article II, section 28, of the constitution of the State of Tennessee.

5th. The act of March, 1877, referred to above, undertakes to declare that the running and using of sleeping cars or coaches on railroads in Tennessee not owned by the railroads upon which they are run or used shall be a taxable privilege, and the companies owning, running, or using the same are subjected to a privilege

tax; but neither that act nor any other statute of the State of Tennessee imposed any privilege tax upon railroad
9 companies running and using sleeping cars or coaches upon their roads, provided such cars or coaches were owned by said railroad companies. This was unequal and unjust discrimination in favor of such railroad companies of the State of Tennessee as owned the sleeping cars or coaches, which they run or used upon their own roads, as was the case with the New Orleans, St. Louis and Chicago R. R. Co., the Memphis and Charleston R. R. Co., and the East Tennessee, Virginia and Georgia R. R. Co., all three of which railroad companies ran and used sleeping cars or coaches on their railroads in Tennessee during the years 1878, 1879, & 1880.

6th. The five thousand seven hundred dollars collected by defendant from the plaintiffs for privilege taxes for the years 1878, 1879, & 1880 was collected upon the assumption that during each of those years plaintiffs owned thirty-eight sleeping cars or coaches which were run or used by them on railroads in Tennessee, whereas in fact plaintiffs never owned exceeding thirty-one cars that were run or used in Tennessee during that time, and for a large portion of that time there were only twenty-five of such cars run or
10 used in Tennessee; and to the extent of the excess over the number actually run and used in said State the tax collected from the plaintiffs as aforesaid was illegal and unjust.

7th. Plaintiffs aver and charge that before said taxes were collected by them from defendant, to wit, on the 7th of April, 1881, so much of said act of March, 1877, as referred to above, and under which said tax was collected from plaintiffs, was repealed by the General Assembly of the State of Tennessee, and at the time said taxes were collected from plaintiffs there existed no law in force for the collection of the same.

8th. Article II, section 17, of the constitution of the State of Tennessee provides that no bill shall became a law which embraces more than one subject to be expressed in the title. The act of March 9th, 1877, referred to above, violates this provision of the constitution, in that it declares the mode and manner of valuing the property of telegraph companies for taxation, as well as the mode and manner of taxing sleeping cars. By reason of the premises and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiffs the said sum of five thousand seven hundred dollars of lawful money of the United States, and thereby
11 and by force of the said statute an action hath accrued to the said plaintiffs to demand and have from the said defendant the said sum of five thousand seven hundred dollars, and to have it determined by this court; that said sum was wrongfully collected from plaintiffs as not being due from them to the State, for the reasons given above. Yet the said defendant, although often requested so to do, hath not as yet paid the said sum of five thousand seven hundred dollars, above demanded, or any part thereof, to the said plaintiffs, but to pay the same hath hitherto wholly refused, and

still doth refouse, to the damage of the said plaintiffs twenty-five hundred dollars, and therefore they bring this suit, &c.

O. A. LOCHRANE,
ED. BAXTER,
Att'ys for Pl'ffs.

(Endorsed on back as follows:) No. 2582. Filed Aug. 13th, 1881. Lewis T. Baxter, cl'k.

On the 13th day of August, 1881, a summons was issued by the clerk of said court as follows, to wit:

Summons.

The President of the United States of America to the marshal of the middle district of Tennessee, Greeting:

12 You are hereby commanded to summon James N. Nolan, comptroller of the treasury of the State of Tennessee, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the middle district of Tennessee, at the Federal court-room in Nashville, in said State, on the third Monday in October next, then and there to answer the Pullman Southern Car Company of a plea that he render unto the plaintiffs the sum of $5,70⁰, which he owes to and from the plaintiffs unjustly detains, to plaintiffs' damage $2,500.

Herein fail not, and bave then and there this writ.

Witness the Hon'l. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said Court, this the 13th day of August, in the year of Lord 1881, and of the Independence of the United States the 105 year.

LEWIS T. BAXTER,
Clerk U. S. Circuit Court.

Memorandum.

The defendant is required to enter his appearance in the office of the clerk of this court by the 1st Monday of October next, or the cause will be set for hearing *ex parte*.

LEWIS T. BAXTER,
Cl'k U. S. Cir. Cou't.

(Endorsed by the marshal:) Aug. 16, 1881, executed on
13 J. N. Nolan, comptroller, by making known to him the contents hereof, and delivering copy of summons and bill. E. S. Wheat, U. S. marshal.

On the 24th day of April, 1882, a demurrer was filed in words and figures following, to wit:

Demurrer.

Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN SOUTHERN CAR CO.
vs.
JAMES N. NOLAN, Comptroller of the State of Tennessee Treasury.

Comes the defendant, James N. Nolan, by his attorney, T. E. Matthews, and demurs to the plaintiff's declaration, and says that the same is insufficient in law; because,

1. The act of 1873, chapter 44, enacted by the General Assembly of the State of Tennessee, conferred jurisdiction on the State courts alone of cases arising under its provisions, and not upon the Federal courts.

2. The declaration fails to show any reason going to the merits of the matter that the money sought to be recovered was not due from the plaintiffs to the State of Tennessee at the time it was paid
14 into the State treasury. The first count alleges a mere conclusion of law, since it does not state what the contract stipulations were under which said cars were run or used.

3. The second count in said declaration does not show that the tax complained of was aimed directly at commerce or the objects of commerce, but on the contrary does show that said tax was simply a tax on a business carried on within the State of Tennessee, which the State could lawfully tax.

4. The third count alleges that the plaintiff used patented inventions in its business, but that cannot be a valid objection to the constitutionality of a legislative act of the State of Tennessee, which declared the business a privilege and taxed it as such.

5. The defendant demurs to the fourth count because the running and using of sleeping cars or coaches on railroads in Tennessee is a privilege in the sense of article II, section 28, of the constitution of Tennessee.

6. Defendant demurs to the fifth count and says that the plaintiff is not a citizen within the meaning of article IV, section 2 of the Constitution of the United States.

15 7th. Defendant says that the sixth count is insufficient in law, because, as the declaration shows on its face by the act of 1877, chapter XVI, section 6, the plaintiff itself was required to report to the comptroller on or before the 1st day of May of each year the number of cars used by it in Tennessee, and it is not alleged that the number of cars on which the tax was collected was less than the number so reported by the plaintiff. The plaintiff is bound by its own report.

8th. Defendant says that the 7th count is not sufficient in law, because the alleged repeal of the act of 1877, chapter XVI, section 6, did not effect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced under or by virtue of said act.

9. Defendant demurs to the 8th count in said declaration and

says that the act of 1877, chapter XVI, does not violate article II, section 17th of the constitution of Tennessee.

T. E. MATTHEWS,
Att'y for Def't.

Endorsed: Filed April 24th, 1882. Lewis T. Baxter, cl'k U. S. cir. court.

16 *Joinder in Demurrer.*

On the 23d day of May, 1884, a joinder in demurrer was filed as follows:

PULLMAN SOUTHERN CAR CO. *vs.* JAMES N. NOLAN, Comptroller.

The plaintiffs come by their attorney and say that the declaration and the matters therein contained are sufficient in law to authorize them to have and maintain their aforesaid action, and they pray judgment for their debt and damages.

O. A. LOCHRANE AND ED. BAXTER,
Att'ys for Plaintiffs.

(Endorsed:) Filed May 23d, 1884. Lewis T. Baxter, cl'k, by Chas. Nash, dep'y cl'k.

On the 6th day of December, 1884, the following plea was filed:

Plea of Nil Debit.

U. S. Cir. Court for the Middle District of Tennessee.

THE PULLMAN SOUTHERN CAR CO.
vs.
P. P. PICKARD, Comptroller of the Treasury of the State of Tenn.

And the said P. P. Pickard, comptroller, &c., by T. E. Matthews, his attorney, comes and defends the wrong and injury, when,
17 &c., and says that he does not owe the said sum of money above demanded, or any part thereof, in manner and form as the Pullman Southern Car Company hath above complained, and of this the said Pickard, comptroller, &c., puts himself upon the country.

T. E. MATTHEWS,
Att'y for Pickard, Comptroller.

Endorsed: Filed Dec. 6th, 1884. Lewis T. Baxter, cl'k of U. S. cir. court.

And on Dec. 6th, 1884, a replication was filed as follows:

Replication. 9

In the U. S. Circuit Court, Middle District of Tennessee, Nashville, Tennessee.

THE PULLMAN SOUTHERN CAR CO.
vs.
JAMES N. NOLAN, Comptroller of the Treasury of the State of Tennessee, revived against P. P. Pickard, as his Successor.

The plaintiff, the Pullman Southern Car Company, as to the plea of the defendant above pleaded, and whereof he has put himself upon the country, doth the like.

ED. BAXTER,
Att'y for Plaintiff.

Endorsed: Filed Dec. 6th, 1884. Louis T. Baxter, clerk, by Chas. Nash, d'p'y cl'k.

18 The following entries appear upon the minutes of day and date as set forth, to wit:

On April 24th, 1882, the following entry appears:

PULLMAN SOUTHERN CAR CO. *vs.* JAMES N. NOLAN, Comptroller. } No. 2582.

This case is set for hearing on 1st day of June, 1882.

On October 24th, 1882, the following entry was made:

PULLMAN SOUTHERN CAR CO. *vs.* JAMES N. NOLAN, Comptroller. } No. 2582.

This case, by consent of counsel on both sides, is continued until the next term of this court.

On April 24th, 1883, the following entry was made:

PULLMAN SOUTHERN CAR CO. *vs.* JAMES N. NOLAN, Comptroller. } No. 2582.

By consent of the parties, by their attorneys, this case is continued until the next term.

On the 4th day of August, 1884, the following entry was made:

19 PULLMAN SOUTHERN CAR CO. *vs.* JAMES N. NOLAN, Comptroller. } No. 2582.

This case was argued by counsel and taken under advisement by the court until the next term of the court.

On the 24th day of November, 1884, the following entry was made;

PULLMAN SOUTHERN CAR CO.
vs.
JAMES N. NOLAN, Comptroller. } No. 2582.

In this cause it is admitted by counsel for both parties in open court that, since the commencement of this suit, the term of office of said Nolan has expired, and that the said P. P. Pickard has been elected and qualified as his successor as comptroller of the treasury of the State of Tennessee, and the said Pickard, as comptroller aforesaid, by his counsel, in open court, agreed that this cause may be revived against him as such comptroller, and stand in the same plight and condition as the same was in when the said Nolan retired from office, and it is thereupon ordered and adjudged by the court
20 accordingly. And thereupon the cause came on further to be heard upon the demurrer of defendant to plaintiff's declaration, whereupon the court was of opinion that the demurrer is not well taken and should be overruled, for the reason stated in the written opinion of Justice Matthews, which is hereby made part of the record in this cause. It is, therefore, ordered and adjudged by the court that said demurrer be overruled, and that said defendant, Pickard, comptroller as aforesaid, plead over to the declaration within thirty days from this date.

On the 29th day of December, 1884, the following entry was made:

PULLMAN SOUTHERN CAR CO.
vs.
JAS. N. NOLAN, Comptroller of the Treasury of the State of Tennessee. } No. 2582.

This cause having been heretofore revived against P. P. Pickard, the successor in the office of the defendant, James N. Nolan, as comptroller of the treasury of the State of Tennessee, came on to be heard on this 29th day of December, 1884, before the Hon'l D. M. Key, judge, &c., holding the circuit court of the United States for
21 the middle district of Tennessee, at Nashville, and a jury having been waived by the parties, the cause was heard by the court upon the issue joined, and upon an agreed statement of the facts, signed by the counsel of both parties, and which statement is hereby made a part of the record at large in this cause.

Whereupon the court found the issues joined in favor of the plaintiffs.

And it further appearing to the satisfaction of the court that on the first day of July, 1881, the said James N. Nolan, then comptroller, as aforesaid, issued a distress warrant against the plaintiffs to collect from the plaintiffs the sum of five thousand seven hundred dollars, which the said Nolan, as comptroller, as aforesaid, alleged and claimed was due from said plaintiffs to the State of Tennessee for privilege taxes for the years 1878, 1879, & 1880, at the rate of fifty dollars on each of thirty-eight sleeping cars run or used by the plaintiff in said State during these years; it further appearing that said distress warrant was levied by the sheriff to whom it was directed

upon one of the sleeping cars belonging to said plaintiffs, and that said plaintiff, on the 15th day of July, 1881, paid said sum of
22 five thousand seven hundred dollars to said Nolan, then comptroller, as aforesaid, but that said payment was made under protest, the said plaintiffs insisting that the said tax was unjust, illegal, and against the statutes and constitution of the State of Tennessee and against the Constitution of the United States; it further appearing that said Nolan, then comptroller, as aforesaid, on said July 15th, 1881, paid said five thousand seven hundred dollars into the treasury of the State of Tennessee, and at the time of making said payment gave notice to the treasurer of said State that the same was paid by plaintiffs under protest; it further appearing that this suit was brought within thirty days from the time that said plaintiffs made said payment to said Nolan, then comptroller, as aforesaid; it further appearing that of the five thousand seven hundred dollars paid by the plaintiffs, as aforesaid, three hundred dollars of it was paid as a privilege tax of fifty dollars per car per annum claimed by said State for running or using two sleeping cars between the cities of Nashville and Memphis, in said State, during the years 1878, 1879, & 1880, but that the rest and residue of said five thousand seven hundred dollars, to wit,
23 five thousand four hundred dollars ($5,400.00), was paid by said plaintiffs as a privilege-tax of fifty dollars per car per annum, claimed by said State from said plaintiffs for running or using thirty-six other sleeping cars in said State during said years 1878, 1879, & 1880; the last-mentioned 36 cars were run or used by plaintiffs in the transportation of passengers from points outside of the State of Tennessee to points within said State, or from points within said State to points without said State, or from points out of said State across said State to points in other States, but that said cars, however, transported passengers from points in said State to other points in said State, whenever they properly apply for transportation, but the number of such passengers bears an inconsiderable proportion to the whole number transported—the court is of opinion, and so orders and adjudges, as follows:

First. That the said sum of three hundred dollars paid by said plaintiffs, as aforesaid, under protest to the said Nolan, then comptroller, as aforesaid, as a privilege tax to said State for running and using the said two cars between Nashville and Memphis, in
24 said State, was legally assessed, paid, and collected, and that plaintiffs have no right to recover said three hundred dollars, or any part thereof, in this action.

Second. That the said sum of five thousand four hundred dollars paid by said plaintiffs under protest, as aforesaid, to the said Nolan, then comptroller, as aforesaid, as a privilege tax to said State upon the other thirty-six cars aforesaid was wrongfully collected from said plaintiffs by said Nolan, then comptroller, as aforesaid, no part thereof being due from said plaintiffs to said State, for the reason that said State had no power to impose a privilege tax upon said plaintiffs for running or using said thirty-six cars in said State, such tax being, in the opinion of the court, a regulation of commerce be-

tween the States, and therefore violative of the Constitution of the United States.

Third. That said plaintiffs recover of the said P. P. Pickard, now comptroller of the treasury of said State, said sum of five thousand four hundred dollars ($5,400), part of the debt in the declaration mentioned, together with the sum of one thousand and eighty-
25 nine and $\frac{80}{100}$ dollars as damages for the detention of said debt, it being interest upon the said sum of five thousand four hundred dollars from July 15th, 1881, to Nov. 26th, 1884, making, together, sixty-four hundred and eighty-nine $\frac{80}{100}$ dollars, and also the costs of this suit, and that a copy of this judgment be certified to the proper officer of the State of Tennessee.

Agreed Statement of Facts.

In the Circuit Court of the United States for the Middle District of Tennessee, at Nashville.

THE PULLMAN SOUTHERN CAR COMPANY, Pl'tffs,
vs.
JAMES N. NOLAN, Comptroller of the Treasury of the State of Tennessee, Defendant. } No. 2582.

This writ having been heretofore revived against P. P. Pickard, the successor in office of the said Nolan, comptroller as aforesaid, upon the trial thereof before the circuit court, the following case was agreed between the plaintiffs and the said Pickard, comptroller as aforesaid, by their respective attorneys, to be subject to the opinion of the court to the law upon the same, namely:

It is agreed by and between said parties—

26 I. That the plaintiffs, the Pullman Southern Car Company, are a corporation, duly incorporated by the General Assembly of the Commonwealth of Kentucky, and have their chief office and place of business at Louisville, in said Commonwealth. Since 1872 they have been engaged at Louisville, Kentucky, in manufacturing railway cars, known as drawing-room cars and sleeping cars, and in hiring said cars to various railroad companies in Tennessee and other States under a form of a contract, in the words and figures contained in a paper marked "Exhibit A," and hereby made a part of this statement, as fully as if copied at length herein.

II. Said company have never had any branch office or establishment of any kind in the State of Tennessee, unless the fact that said company have placed their tickets for sale with railway agents in said State constitutes the offices of such agents branch offices or establishments of the Pullman Southern Car Company. They have never had any ticket agents of their own in Tennessee, except in so far as the ticket agents of the railway companies with whom the tickets of the Pullman Southern Car Company have been placed for sale may be regarded as the agents of the latter company.

27 Said Pullman Southern Car Company have never had any other agents, officers, or employees in said State of Tennessee, except the conductors and porters which they furnish with their

cars under said contracts with said railroad companies. The cars furnished by said Pullman Southern Car Company under said contracts constitute all the property owned by said company in said State, and the business done by said company under said contracts, such as it is, is the only business done by them in said State of Tennessee.

III. The cars furnished by said Pullman Southern Car Company under said contract (with the exception of two sleeping cars running between Nashville and Memphis) are used in transporting passengers from other States into or across the State of Tennessee, and from points in Tennessee to points in other States. The same cars, however, also transport passengers from points in Tennessee to other points in that State whenever they properly apply for such transportation, but the number of such passengers bears an inconsiderable proportion to the other passengers transported in said cars. Such cars run into, out of, or across the State of Tennessee, making such stops as the railroad trains to which they are attached make.

28 IV. In the case of passengers travelling across the State of Tennessee, or from points out of that State to points in that State, their sleeping car tickets are purchased and paid for before they enter said State; but in the case of passengers from points in Tennessee to points in other States, or in the same State, the tickets are purchased and paid for in the State of Tennessee.

V. The railroad companies of Tennessee with whom such contracts were made were duly chartered by that State, or organized or operated under its laws, with power to transport passengers for hire. They are taxed by said State upon the value of their roads, rolling-stock, and other tangible property, and also upon the value of their franchises.

VI. From March 16th, 1877, to the present time the Memphis and Charleston Railroad Company and the East Tennessee, Virginia and Georgia Railroad Company, both of which companies were chartered by the State of Tennessee, have owned sleeping cars which they have run and used during that time as sleeping cars upon their respective roads, and said companies have not been required by the State of Tennessee to pay any tax for running or using said sleeping cars upon their roads, except in so far as such a tax may have

29 been included in the tax assessed against said companies by said State upon the value of their franchises.

VII. The General Assembly of Tennessee passed an act approved March 16th, 1877, entitled "An act declaring the mode and manner of valuing the property of telegraph companies for taxation and of taxing sleeping cars," the sixth section of which is as follows: "Be it further enacted, That the running and using of sleeping cars or coaches on railroads in Tennessee, not owned by the railroads on which they are run or used, is declared to be a privilege, and the companies owning and running or using said cars or coaches are required to report on or before the first day of May of each year to the comptroller the number of cars so used by them in this State; and they shall be required to pay to the comptroller by the 1st day

of July following fifty dollars for each and every of said cars or coaches used or as run over said roads; and if the said privilege tax herein assessed be not paid as aforesaid the comptroller shall enforce the collection of the same by distress warrant."

VIII. The General Assembly of the State of Tennessee passed an act approved March 21st, 1873, entitled "An act to facilitate
30 the collection of revenue," by which it was provided, among other things, that "in all cases in which an officer charged by law with the collection of revenue due the State shall institute any proceedings, or take any step for the collection of the same, alleged or claimed to be due by said officer from any citizen, the party against whom any step is taken shall, if he conceives the same to be unjust or illegal, or against any statute or clause of the constitution of the State, pay the same under protest, and upon his making such payment the officer or collector shall pay such revenue into the State treasury, giving notice at the time of payment to the comptroller that the same was paid under protest, and the party paying such revenue may at any time within thirty days after making said payment, and not longer thereafter, sue the said officer having collected said sum for the recovery thereof, and the same may be tried in any court having jurisdiction of the amount and parties, and if it be determined that the same was wrongfully collected, or not being due from the said party to the State for any reason going to the merits of the same, then the court trying the case may cer-
31 tify of record that the same was wrongfully paid and ought to be refunded, and thereupon the comptroller shall issue his warrant for the same, which shall be paid in preference to other claims on the treasury."

On July 1st, 1881, the said James N. Nolan, then being comptroller of the treasury of the State of Tennessee, and a citizen of the middle district of said State, alleged and claimed that there was due from the said Pullman Southern Car Company to the State of Tennessee privilege taxes for the years 1878, 1879, & 1880, at the rate of fifty dollars upon each of 38 sleeping cars for each of said years as run or used by said company in said State, making in the aggregate privilege taxes to the amount of five thousand seven hundred dollars; and so alleging or claiming, the said Nolan, comptroller as aforesaid, on said 1st day of July, 1881, issued a distress warrant to a sheriff of one of the counties of said State, which was levied upon one of the sleeping cars belonging to the said company to enforce the payment of said sum. The company on November 15th, 1880, filed a bill in this court against the comptroller and the sheriff, to whom the distress warrant had been issued, and obtained a
32 restraining order from Judge Key, restraining them from selling a car which had been levied upon under the warrant; but upon argument the company's motion for an injunction was overruled and disallowed. Said company, on the 15th day of July, 1881, paid said sum of $5,700.00 to said Nolan, comptroller as aforsaid, under protest, claiming that said tax was unjust, illegal, and against the statutes and constitution of the State of Tennessee, and the Constitution of the United States. On July 15th, 1881, said Nolan, comp-

troller as aforesaid, paid said sum of $5,700.00 into the treasury of the State of Tennessee, and gave notice to the treasurer of said State at the time of said payment that the same was paid by said company under protest; and afterwards, on August 13th, 1881, this suit was commenced. The 38 cars upon which the privilege tax was collected by said Nolan, comptroller as aforesaid, included two cars run and used during said years by said company between the cities of Nashville and Memphis in said State of Tennessee.

XI. P. P. Pickard, the successor in office of said Nolan,
33 comptrolier as aforesaid, is and was at the time this suit was revived against him, a citizen and a resident of the middle district of Tennessee.

Upon the foregoing agreed statement of facts it is submitted to the court, without the intervention of a jury, to decide whether the plaintiffs (The Pullman Southein Car Company) are entitled to recover, and, if so, to render judgment in their favor for the amount appearing to be due to them; but if the court should be of the opinion that said plaintiffs are not entitled to recover, then judgment is to be rendered for the defendant.

ED. BAXTER,
Att'y for Pullman Southern Car Co.
T. E. MATTHEWS,
Att'y for P. P. Pickard, Comptroller of the Treasury of the State of Tennessee.

Exhibit "A" to Statement of Facts.

PULLMAN SOUTHERN CAR CO.
vs.
JAMES N. NOLAN, Comptroller of the Treasury of the State of Tennessee.

This indenture, made this 19th day of June, A. D. 1872, between the Louisville and Nashville Railroad Company, the party of the first part, and the Pullman Southern Car Company, of the sec-
34 ond part, whereas the said party of the second part is now engaged in the business of manufacturing railway cars, known as drawing room and sleeping cars, under certain patents belonging to them, and of hiring the same to railroad companies, and receiving therefor income and revenue by the sale to passengers of seats and berths, and accommodations therein; and whereas the said party of the first part is desirous of availing itself of the use on and over its lines of road of the cars constructed under the sleeping and drawing room car patents, now the property of said second party, and also of connections by means of said cars with other lines of railroad, whereon said cars are now operated by said second party, now this contract witnesseth: That the said party of the second part, in consideration of the covenants and agreements of the party of the first part, hereinafter mentioned to be by them kept and performed, hereby agrees with the said party of the first part that they will furnish drawing-room cars and sleeping cars to be used by said party for the transportation of passengers sufficient to meet the re-

quirements of travel on and over their line of railroad, and
35 on and over all lines of railroad which they now control, or may hereafter control, by ownership, lease, or otherwise, the said cars so furnished to be satisfactory to the general superintendent of the first party.

2d. The said party of the second part agrees that they will keep the carpets, upholstery, and bedding of each of the said cars in good order and repair, and renew and improve the same, when necessary, at their own expense, excepting repairs and removals made necessary by accident or casualty; it being understood that the said first party shall repair all damages to said cars of every kind occasioned by accident or casualty during the continuance of this agreement.

3d. The said party of the second part hereby agrees, at their own expense and cost, to furnish one or more employees, as may be needful, upon each of said cars, whose duties shall be to collect fares for the accommodations furnished in said cars, and generally to wait upon passengers therein, and provide for their comfort.

4th. The said party of the first part hereby agrees that the
36 general officers of said second party, and the employees named in article third of this agreement, shall be entitled to free passage over the lines of the first party when they are on duty for the second party.

5th. The party of the second part hereby agrees that the general officers of the first part shall be entitled to free passes in any of the cars furnished by said second party under this agreement.

6th. It is hereby mutually agreed that the said employees of the second party named in article third of this agreement shall be governed by and subject to the rules and regulations of the said first party, which are, or may be, adopted from time to time, for the government of their own employés, and in the event of any liability arising against said first party for personal injury, death, or otherwise of any employé of said second party, it is hereby distinctly understood and agreed that the said first party shall be liable only to the same extent they would be if the person injured was an employé in fact of said first party, and for all liability in excess thereof shall be indemnified and paid by said second party.

37 7th. The party of the first part, in consideration of the use of the aforesaid cars, hereby agrees to haul the same on the passenger trains on their line of road and on all roads which they now control or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they may, by virtue of contracts or running arrangements with other roads, have the right to use in such manner as will best accommodate passengers desiring the use of said cars; and the said party of the first part shall, at their own expense, furnish fuel for the cars and materials for the lights; shall wash and cleanse said cars, and shall also keep said cars in good order and repair, including renewals of worn-out parts, and all things appertaining to said cars necessary to keep them in first-class condition, except such as are provided for in article second of this agreement.

8th. The party of the first part agrees to furnish said party, at con-

venient points, room and conveniences for airing and storing bedding.

9th. The said party of the first part further agrees that the
38 said party of the second part shall be entitled to collect from each and every person occupying said cars such sums for said occupancy as may be usual on competing lines furnishing equal accommodations, and that such rules and regulations shall be agreed upon as will most favor the renting of seats and couches in said cars.

10th. The party of the first part hereby agrees to permit the party of the second part to place their tickets for seats and coaches for sale in such of the railroad ticket offices as may be desired by said second party, and such services shall be performed by and as part of the general duties of the ticket agents, and without charge to the party of the second part; proceeds of such sales to be at the risk of said second party.

11th. The party of the first part hereby agrees that said second party shall have the exclusive right, for a term of fifteen years from the date hereof, to furnish for the use of the first party drawing-room or parlor cars and sleeping cars, including reclining-chair cars on on all the passenger trains of said first party and over their entire lines of railroad and on all railroads which they may control
39 or may hereafter control by ownership, lease, or otherwise, and also on all passenger trains on which they may, by virtue of contracts or running arrangements with other roads, have the right to use such cars, and that they will not contract with any other parties to run said class of cars on or over said lines of road during said period of fifteen years.

The said second party for the consideration aforesaid, hereby guarantees said first party against all damages of whatsoever kind which may be by said first party incurred in consequence of any infringement of patent rights in the construction and use of any of said cars which may be used by said second party upon the lines of said first party under this arrangement, it being the meaning and intent of this article that the said second party shall secure said first party against all manner of expenditures which may be incurred by said first party in consequence of any litigation connected with alleged infringements of patent rights for the interior arrangements of said cars, and that they will pay off and discharge all judg-
40 ments obtained at any time against said first party on account of such infringements.

12th. It is mutually agreed between the parties hereto, that in case either of said parties shall, at any time hereafter, fail to keep and perform any of the covenants herein contained to be by them respectively kept and performed, then, and in that case, after written notice shall have been given to the defaulting party thereto of the default complained of, if the said defaulting party shall refuse or neglect to make good, keep, and perform such unfulfilled covenants and conditions of this agreement within a reasonable time after such notice, the other party shall be at liberty to declare this contract ended and and no longer in force.

In witness whereof, the party of the first part hath caused its corporate seal to be attached hereto by the president and secretary, and the party of the second part hath caused its corporate seal to be attached hereto in like manner, attested by its president and secretary, the day and year first above written.

[SEAL.] LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
(Signed) By H. D. NEWCOMB, *Pres't.*
(Signed) W. RANNEY, *Sec'y.*
[SEAL.] THE PULLMAN SOUTHERN CAR COMPANY.
(Signed) GEO. M. PULLMAN, *Pres't.*
Attest:
(Signed) S. M. LAMONT, *Sec'y.*

41 *Opinion of Court.*

PULLMAN SOUTHERN CAR COMPANY *vs.* JAMES N. NOLAN, Comptroller. } 2582. At Law.

PULLMAN SOUTHERN CAR CO. *vs.* MONTGOMERY COUNTY *et al.* } 2591. In Equity.

STATE OF TENNESSEE *vs.* PULLMAN SOUTHERN CAR CO. } 2679. In Equity.

The first of these cases is an action at law to recover back an amount alleged to have been illegally exacted as taxes. A statute of the State authorizing such a suit, and the plaintiff being a citizen of Kentucky, it is submitted for decision upon a general demurrer to the declaration. The second is a bill of equity, the object of which is perpetually to enjoin the defendants, the counties of Montgomery, Stewart, Houston, Robertson, Sumner, and Davidson, from collecting taxes which they assert the right to collect of
42 the same description as those involved in the action against the comptroller.

The third suit is a bill in equity filed by the State of Tennessee, seeking to compel a discovery from the defendant of the number of cars used by it, claimed to be subject to the tax in question, and to recover and collect the amount of tax due thereon. This suit was commenced in the chancery court of Davidson county, but was removed into this court on the application of the defendant.

All three cases depend upon a single question. The constitution of Tennessee provides (art. II, sec. 28), that "all property, real, personal, or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities, or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary, or educational, and shall except one thousand

dollars' worth of personal property in the hands of the taxpayer and the direct product of the soil in the hands of the producer and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the
43 Legislature shall direct, so that taxes shall be equal and uniform throughout the State. No species of property from which a tax may be collected shall be taxed higher than any other species of the same value; but the Legislature shall have power to tax merchants, peddlers, and privileges in such manner as they may from time to time direct."

That constitution also provides, art. II, sec. 29, that "the General Assembly shall have power to authorize the several counties and incorporated towns in this State to impose taxes for county and corporation purposes, respectively, in such manner as shall be prescribed by law, and all property shall be taxed, according to its value, upon the principles established in regard to State taxation."

On March 16th, 1877, the General Assembly of Tennessee passed an act, entitled "An act declaring the mode and manner of valuing the property of telegraph companies for taxation, and of taxing sleeping cars, the sixth section of which is as follows:

"That the running and using of sleeping cars or coaches on railroads in Tennessee, not owned by the railroads upon which
44 they are now run or used, is declared to be a privilege, and the companies owning and running or using said cars or coaches are required to report, on or before the 1st day of May of each year, to the comptroller, the number of cars so used by them in this State; and they shall be required to pay to the comptroller by the 1st of July following $50.00 for each and every one of said cars or coaches used or so run over said roads; and if the said privilege tax herein assessed be not paid as aforesaid, the comptroller shall enforce the collection of the same by distress warrant."

The Pullman Southern Car Company is a corporation created by the laws of Kentucky, and its principal office and place of business in Louisville, in said State. It manufactures sleeping cars and drawing-room coaches, and furnishes them to railroads under contracts for that purpose, retaining the ownership, and receiving compensation by the sale of tickets to passengers desiring such accommodations. It has such arrangements with various railroad companies in Tennessee, on and over whose roads its cars are run and used in carrying passengers into the
45 State from points out of it, and out of the State from points within it, and across the State between points in other States, as well as between points wholly within it. Two only of such cars are used exclusively for carrying passengers between points wholly within the State, and as to them no question is made. In respect to all others it is claimed that the tax is invalid as a regulation of interstate commerce. The exclusive right to regulate is expressly confided by the Constitution to the Congress of the United States.

The tax [it] is not denied is what is known to the constitution and laws of Tennessee as a privilege tax. It is not a property tax, for

by the terms of the State constitution that must be based on value, whereas there is an arbitrary charge fixed by the Legislature itself without regard to the actual or comparative value of the article which is the basis of the tax.

A reference to repeated decisions of the supreme court of Tennessee leaves no room to doubt what constitutes a "privilege" as a subject of taxation under the constitution and laws of that State.

"The first Legislature after the formation of the constitution," said that court in French *vs.* Baker, 4 Sneed, 193, "acted upon
46 the idea that any occupation which was not open to every citizen, but could only be exercised by a license from some constituted authority, was a privilege, and it is presumed that this is a correct definition of the term." In Mayor of Columbia *vs.* Yoest, 3 Head, 414, the keeping of a livery-stable was held not to be a privilege, because the Legislature had not so declared it. "A privilege," said the court in Jenkins *vs.* Ewing, 8 Heiskell, 456, "is the exercise of an occupation or business which requires a license from some proper authority designated by some general law, and not free to all or any without such license."

"There is a clear distinction recognized," says the supreme court of Georgia in Howe Insurance Co. *vs.* Augusta, 50 Georgia, 530, "between a license granted or required as a condition precedent before a certain thing can be done, and a tax assessed on the business which that license may authorize one to engage in. A license is a right granted by some competent authority to do an act which without such authority would be illegal. A tax is a
47 rate or sum of money assessed upon the person, property, business or occupation of the citizen." And this principle, it is said by counsel for the State in argument, has been repeatedly recognized by the supreme court of the State of Tennessee, as early as in 1839 in the case of Robinson *vs.* The Mayor of Franklin, 1st Hump., 156. And in Mayor of Columbia *vs.* Beasley, 1st Hump., 232, the court says: "The Legislature may tax privileges in what proportion they choose, and so may municipal corporations, provided the inequality be not such as to make it oppressive upon a particular class of the community."

It results, therefore, that in Tennessee the Legislature may declare the right to carry on any business or occupation to be a privilege, to be purchased from the State upon such conditions as the law may prescribe, to engage in and pursue which without compliance therewith is illegal. In the present case "the running and using of sleeping cars or coaches on railroads in Tennessee not owned by the railroads upon which they are run or used, is declared to be a
48 privilege." The condition upon which it may be obtained and exercised is the payment of an annual tax of seventy-five dollars per car for every car so run or used. If that condition is not complied with, such running and using of sleeping cars or coaches is forbidden and is unlawful. The right to attach this condition involves the right to attach any others the legislature may see fit to adopt, and the question of the right to impose the tax as a condition of the exercise of this privilege resolves itself into the broader ques-

tion of the right to prohibit it altogether, for that which the Legislature may license it may forbid; indeed, it is forbidden unless it be licensed. The question thus reduced becomes one not of the limitations upon the taxing powers of the State, but upon its power to declare the business of this company as carried on upon and across its territory a privilege, or to forbid it altogether. "Beyond question," said Mr. Justice Clifford, delivering the opinion of the Court in Transportation Company *vs.* Wheeling, 99 U. S., 273–279, "these authorities show that all subjects over which the sovereign power of a State extends are objects of taxation, the rule being
49 that the sovereignty of a State extends to every thing which exists by its own authority or is introduced by its permission, except those means which are employed by Congress to carry into execution the powers given by the people to the Federal Government, whose laws, made in pursuance of the Constitution, are supreme."

And according to the decision in Crandall *vs.* Nevada, 6 Wall., 35, the power of the States whether exerted in the form of taxation or otherwise is still further limited so as not to deny or impair any rights belonging to a citizen of the United States as such by virtue of the Constitution, as in that case the right of the people to pass and repass into, through, and out of any State without interruption —. In that case Mr. Justice Miller, delivering the opinion of the Court, after commenting on the case of McCullough *vs.* Maryland, said, p. 46: "It will be observed that it was not the extent of the tax in that case which was complained of, but the right to levy any tax of that character. So in the case before us it may be said that a tax of one dollar for passing through the State of Nevada by stage coach or railroad cannot sensibly effect any function of the Govern-
50 ment, or deprive a citizen of any valuable right. But if the State can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one State can do this, so can every other State. And thus one or more States covering the only practicable routes of travel from the East to the West, or from the North to the South, may totally prevent or seriously burden all transportation of passengers from one part of the country to the other."

In the case of The State Freight Tax, 15 Wall., 232–280, it was distinctly declared that the transportation of passengers or merchandise through a State or from one State to another was a subject of the exclusive jurisdiction of Congress, and that a State could not directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation." And in Alvry *vs.* The State of California, 24 Howard, 169, as explained in Woodruff *vs.* Parham, 8 Wall., 123–138, it was decided that a stamp tax imposed by State authority upon bills of lading for the transportation of gold and silver irom any point within the State
51 to any point without the State "was a regulation of commerce, a tax imposed upon the tranportation of goods from one State to another, over the high seas, in conflict with the freedom of transit of goods and persons between one State and another, which is within the rule laid down in Crucher *vs.* Nevada,

6 Wall 35, and with the authority of Congress to regulate commerce among the States." If a tax upon the person or thing carried is a regulation of commerce forbidden to the States, it seems impossible to escape the conclusion that a tax imposed as the price of the privilege of being carried is equaly such a regulation. It is immaterial whether the privilege granted or withheld is attributed to the carrier or to that which he is engaged in carrying. In both cases it is a burden upon the act of transportation and a tribute levied directly upon commerce itself. In the langaage of Mr. Justice Strong, delivering the opinion of the Court in the case of the State Freight Tax 15, Wall 232–281: "Interstate transportation of passengers is beyond the reach of a State Legislature. * * * We regard it as established that no State can impose a tax upon freight
52 transported from State to State or upon the transporter because of such transportation."

The case is to be distinguished from that of Osborne *vs.* Mobile, 16 Wall, 479, where the subject of the tax was not the act of transportation itself, but a general business carried on within the State by a resident citizen thereof, which included the making of contracts for transportation beyond the limits of the State.

Now it is within the decision in the case of Wiggins, Ferry & Co. *vs.* East St. Lous, 107 U. S., 365, where the point ruled was that the levying of a tax on vessels or other water craft or the exaction of a license fee by the State within which the property subject to the exaction has its *situs*, is not a regulation of commerce within the meaning of the Constitution of the United States, although the property is employed in foreign or interstate commerce.

In the present case the Pullman Southern Car Company, a corporation of Kentucky, has no domicil in Tennessee and is not personally subject to its jurisdiction for purposes of taxation
53 and the sleeping cars which it runs and uses upon the rail, roads of that State in the transportation of passengers into and from it, from and to other States, have no *situs* within that State for purposes of taxation. They are not brought into the State for the purpose of being employed in a business carried on within it, and so do not become part of the mass of property within the jurisdiction of the State for the purposes of taxation. They are in the State only as passing to and from it while in the act of transportation performed by virtue of a right secured to the owners of them, not by the authority of the laws of Tennessee, but by virtue of the right secured by the exclusive jurisdiction of Congress under the Constitution. It has been suggested that these sleeping cars do not really perform any office in the act of transportation, but may be likened rather to hotels or inns on wheels, and like other hotels or inns subject to regulation and license by the State. But the refinement is too subtile to be sound. Even regarded as such
54 hotels or inns on wheels, propelled by steam power over railroad tracks, receiving and delivering travellers at points widely separated in distance, would properly be considered still as vehicles of transportation, and their use in that way would be commerce.

The conclusion reached from these considerations is that a tax upon the running and using of sleeping cars or coaches on railroads in Tennessee not owned by the railroads upon which they are run or used as a privilege is equivalent to a concession that the State may regulate it in all other respects, or forbid it altogether; that, consequently, it is a regulation of commerce among the States when applied to such cars employed in interstate transportation, and, in that application, contrary to the Constitution of the United States, and, therefore, null and void.

In accordance with this opinion judgments and decrees will be entered in these cases as follows:

1st. In No. 2582 the action against the comptroller to recover the taxes paid under protest, as illegally exacted, the demurrer will be overruled and judgment rendered for the plaintiffs for such
55 amount as may be agreed on or otherwise ascertained.

2d. In No. 2591 a decree will be rendered finding the equity of the cause with the complainant, and granting the relief prayed; enjoining the several county authorities from proceeding further in the collection of the tax.

3d. In No. 2679 the bill of the State will be dismissed for want of equity.

STANLEY MATTHEWS,
Associate Justice.

Filed Oct. 20th, 1884.

LEWIS T. BAXTER, *Clk.*

56 *Appeal Bond.*

Circuit Court of the United States for the Middle District of Tennessee.

PULLMAN SOUTHERN CAR CO.
vs.
JAMES N. NOLAN, Comptroller of the Treasury of the State of Tennesse, (revived against P. P. Pickard, Comptroller of the Treasury of the State of Tenn).

Know all men by these presents that we, J. W. Allen and Leon Trousdale, Jr., of the county of Davidson, State of Tennessee, are held and firmly bound unto the Pullman Southern Car Co. in the sum of $500, to be paid to said Pullman Southern Car Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of July, 1885.

Whereas lately at a term of the United States circuit court for the middle district of Tennessee in a suit depending in said court between the Pullman Southern Car Company, as plaintiff,
57 and James N. Nolan, comptroller of the treasury of the State of Tennessee, (revived against P. P. Picard, comptroller, &c.,) as defendant, judgment was rendered against said defendant and in favor of said plaintiff on the 29th day of December, 1884, and said

defendant has prosecuted a writ of error to the Supreme Court of the United States to reverse said judgment.

Now, therefore, the condition of said obligation is such that if the said P. P. Pickard, comptroller, &c., shall prosecute his said writ of error with success, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

J. W. ALLEN.
LEON TROUSDALE, JR.

Approved.
D. M. KEY,
U. S. Dist. Judge.

Personally appeared before me N. Baxter, clerk of the supreme court, the undersigned J. W. Allen and Leon Trousdale, Jr., and made oath that they and each of them are worth the amount
58 of said bond.

Nashville, July 28th, 1885.

J. W. ALLEN.
LEON TROUSDALE, JR.

Sworn to and subscribed before me this 28 July, 1885.
NATHANIEL BAXTER,
Clerk S. C. of Tenn.

59 UNITED STATES OF AMERICA,
Middle District of Tennessee:

I, Lewis T. Baxter, clerk of the circuit court of the United States for the middle district of Tennessee, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the case of the Pullman Southern Car Co. *vs.* James N. Nolan, comptroller, &c., as the same are of record and file in my office.

In testimony whereof I hereunto set my hand and the seal of said court, at Nashville, Tenn., this 28 day of July, A. D. 1885, and of the Independence of the United States the 110 year.

[Seal of the Circuit Court U. S., Middle Dist. Tenn.]

LEWIS T. BAXTER, *Clk.*
By CHAS. NASH, *D. C.*

Costs, $57.45, including cost of transcript, paid by P. P. Pickard, comptroller, &c.

LEWIS T. BAXTER, *Clk.*
By CHAS. NASH, *D. C.*

60 THE UNITED STATES OF AMERICA:

To the Pullman Southern Car Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the office of the circuit court of the United States for the middle district of Tennessee, wherein P. P. Pickard, comptroller, formerly J. N. Nolan, comptr., is plaintiff in error, and the

Pullman Southern Car Company is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

61 Witness the Hon. D. M. Key, district judge of the United States for the middle district of Tennessee, at the city of Nashville, in said district, this the 29 day of December, 1884, and of the Independence of the United States the 109th year.

D. M. KEY, *Judge.*

I accept service of the above citation this the 29 day of December, 1884.

ED. BAXTER,
Of Counsel and Attorney for Defendant.

62 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the middle district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in said circuit court of the United States of America for the middle district of Tennessee, before you, between P. P. Pickard, comptroller, formerly J. N. Nolan, comptroller, plaintiff, and the Pullman Southern Car Company, defendant, a manifest error hath happened, to the great damage of said P. P. Pickard, comptroller, &c., as by the complaint appears, and it being fit that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given,

63 that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 29th day of December, A. D. 1884, and of the Independence of the United States the 109th year.

LEWIS T. BAXTER,
Clerk U. S. Circuit Court for the Middle District of Tennessee.

Endorsed on cover: M. Tennessee, C. C. U. S. No. 933. P. P. Pickard, comptroller of the treasury of the State of Tennessee, plaintiff in error, *vs.* The Pullman Southern Car Company. Filed September 10, 1885.